Filed 8/16/10 In re P.S. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re P.S., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.S. et al., Defendants and Appellants.	E050364 (Super.Ct.No. J224867) OPINION

APPEAL from the Superior Court of San Bernardino County. James A. Edwards, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant B.S.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and Appellant D.S.

Ruth E. Stringer, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Plaintiff and Respondent.

Appellants B.S. (Father) and D.S. (Mother) appeal the termination of their parental rights under Welfare and Institutions Code[1] section 366.26 as to their minor daughter, P.S. Father contends the court improperly declined to apply the parent bond exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) based on the quality of his relationship with P.S. Mother contends that, if for any reason Father's rights are not terminated, then her own rights cannot be terminated.

I. PROCEDURAL BACKGROUND AND FACTS

Mother, born in 1980, has a family history of drug and gang involvement. Mother began abusing substances at the age of 13. She married at age 16 and never graduated from high school. In total, Mother has given birth to nine children. Her first six children were dependents of the juvenile court from 2005 to 2008. Her parental rights were terminated in 2006 for neglect, and the children were eventually adopted by the sister of Mother's best friend.

Father, born in 1984, was sexually abused by a male cousin from age eight to 11. He began his own pattern of abusing substances at age 16. He completed the 11th grade. He was arrested in 2005, 2006, and 2007, and spent several weeks in jail. Father is the father of P.S. He is not married to Mother, nor is he the father of Mother's other children.

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[1] All further statutory references are to Welfare and Institutions Code unless otherwise indicated.

P.S. was born in November 2008. She was premature by five weeks. Mother tested positive for methamphetamine. P.S. remained in the hospital's neonatal intensive care unit for an extended period. Mother was living with her mother and her seventh (M.) and eighth (D.) children.

A social worker visited the maternal grandmother's home and found it unacceptable. Mother agreed to move to a relative's house. On December 5, 2008, Mother and her two daughters, M. and D., entered Option House in order to receive voluntary family maintenance services. However, Mother left a few days later. She resided with a friend and agreed to court family maintenance services. Father claimed he had not used his drug of choice, marijuana, for about nine months. He was not employed and did not have stable housing.

On December 11, 2008, San Bernardino County Children and Family Services (CFS) filed a petition alleging P.S. and her two sisters[2] came within the meaning of section 300, subdivisions (b) (failure to protect) and (j) (abuse of siblings as to Mother), because the parents had histories of abusing controlled substances, and mother had failed to reunify with P.S.'s six half siblings. It also alleged that Mother's parental rights had been terminated as to the six children who had been adopted.[3]

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[2] Because no issue in this appeal involves M. and D., references to them will be limited to an as-needed basis.

[3] The petition was later amended to refer to Father as "presumed" rather than "alleged." This amended version was sustained by the court on February 19, 2009.

At the detention hearing on December 12, 2008, P.S. was still hospitalized. The court removed P.S. from Father and continued her in Mother's care and custody on the condition that Mother must reside at a specified location. Supervised visitation was ordered for Father. A jurisdictional/dispositional hearing was set for January 14, 2009.

The social worker made an unannounced home visit on January 9, 2009, after Mother refused a second drug test. The front door was open. Father was seated in the living room with P.S. He "immediately jumped up and exited the apartment." Mother was not present. Later that same day, the social worker obtained a detention warrant and took P.S. into protective custody. P.S. was placed in foster care. The parents had no stable home.

On January 14, 2009, both parents tested positive for illegal drugs. By February 10, Father was in custody at West Valley Detention Center.

On February 19, 2009, the court sustained the amended section 300 petition. Father was declared the presumed father of P.S., the child was removed from parental custody, and both parents were ordered to participate in family reunification services. Supervised visitation was set at one hour each week.

On February 28, 2009, Father was charged with resisting an officer and battery against a peace officer. He pled guilty, was sentenced to 60 days in jail, and was released on April 27. Both parents missed a substantial number of visits without calling in advance to reschedule or cancel. For this reason, the court ordered them to give 24 hours' advance telephone confirmation if they were planning to attend a scheduled visit. Mother failed to participate in family reunification services and then disappeared.

Father seemed to be maintaining a transient lifestyle and did not give CFS accurate contact information. He did not participate in family reunification services, appeared unmotivated, and was still using illegal drugs. As of August 2009 Father had attended only two of the past six scheduled visits with P.S. Overall, he had attended six out of 14 visits. When the social worker inquired as to "what he is pursuing and what help he needs on his case plan," Father would always respond, "I'm not doing shit."

P.S. was thriving in her foster placement and functioning within the normal range of behaviors for her age. On July 20, 2009, CFS gave notice that it would ask the court to terminate family reunification services and set a section 366.26 hearing. Both parents contested the recommendation. They also continued to refuse to drug test. Between August 19 and September 9, they attended only one scheduled visit out of four.

At the contested six-month review hearing on September 22, 2009, neither parent presented affirmative evidence. The court ended family reunification services for both and set a section 366.26 hearing for January 19, 2010.

On November 18, 2009, P.S. was moved to a concurrent planning home in the Fresno area with the B. family. The court ordered that supervised visitation with the parents take place every other week for two hours. CFS provided transportation assistance.

Of the 11 scheduled visits between September 23, 2009, and January 8, 2010, Father attended eight. Both parents were described as "attentive and affectionate with [P.S.] during the visits." P.S. showed "no identification of [Mother] and [Father] as her parents separate from her willingness to go to any adult in the room. There does not

appear to be a parent/child attachment or bond between [P.S.] and [the parents]." At some visits, the child appeared more interested in the food the parents brought. On December 4, it was suspected that the parents were under the influence of alcohol. Father continually left the room for periods of five to 10 minutes. After the visits, P.S. neither cried nor appeared to be upset. Instead, she "got very excited and happy when returned to the foster parents."

The social worker reported that "[P.S.] willingly goes to any adult who holds out their hands to her." He observed her "crawling to and seeking the foster mother's attention, where her physical and emotional needs are consistently being met." She was very attached and bonded to her half sisters. The foster parents were "able and willing to provide a stable and nurturing adoptive home for [P.S., who] show[ed] a clear attachment with her concurrent planning foster family." CFS recommended termination of parental rights with a permanent plan of adoption.

On January 26, 2010, Father was arrested for driving under the influence and presenting false identification to a peace officer. He remained incarcerated until after the section 366.26 hearing. At the section 366.26 hearing, which was held on February 24, Mother did not object to termination of her parental rights. She just requested that P.S. be placed with her six half siblings.[4] Father joined Mother's request; however, he objected to termination of his parental rights, arguing there was a parent-child bond. Father testified that when he visited P.S., she smiled and recognized him. He stated that

[4] According to Mother's counsel, the family was willing to take P.S. and the other two girls.

he attended the majority of his weekly visits. Father wanted guardianship and a chance to turn his life around to try to get P.S. back. Although he was incarcerated, he expected to be released on March 1.

Rejecting Father's argument, the court found the evidence did not support a parent-child bond. The court observed, "Father has not been in her life of, possibly, 15 months, all that much. There is evidence that a number of visits were missed, visits before she moved to Fresno, which was about three months ago, was hit and miss, I think, to use his terms." As to Mother, the court stated, "The exception that is being relied upon by Mother is that she wants to maintain a sibling relationship. [CFS] makes valid legal argument that technically the siblings that were adopted out in 2006 are no longer her siblings. [¶] But even . . . if we were to consider them as her siblings, again, there is no clear and convincing evidence that there has been such a bond established that it would be detrimental to [P.S.] to sever that bond."

After considering the evidence before it, the court found clear and convincing evidence that P.S. would be adopted and thus terminated the parental rights of Mother and Father. Adoption was chosen as the permanent plan.

II. THE COURT'S FINDING THAT THE PARENTAL BOND EXCEPTION DOES NOT APPLY IS SUPPORTED BY SUBSTANTIAL EVIDENCE

At the section 366.26 hearing, Father argued his parental rights should not be terminated because he and P.S. shared a parent-child bond that was beneficial to the child. The court found there was insufficient evidence of a bond. Father contends this finding is not supported by substantial evidence. We disagree.

After termination of reunification services, the focus of juvenile dependency proceedings is on the child's needs, including his or her need for a stable, permanent home. Consequently, the statutory preference for a permanent plan for a dependent child is adoption, and the court must terminate parental rights and refer the child for adoption unless one of the exceptions provided for in section 366.26, subdivision (c) applies. (§ 366.26, subd. (c); *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Section 366.26, subdivision (c)(1)(B)(i) provides that, even if the court finds the child is adoptable and there is a reasonable likelihood the child will be adopted, the court may nevertheless decline to terminate parental rights if the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In order to prevail in asserting the exception, the parent must demonstrate both that he or she has maintained regular visitation and contact with the child, and that a continued parent- child relationship would "promote[] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. . . . If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; see *In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

On appeal, we review the court's finding that the exception does not apply under a deferential standard which has been articulated as a substantial evidence/abuse of discretion standard: "Broad deference must be shown to the trial judge. The reviewing

court should interfere only '"if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did." [Citations.]' [Citation.]" (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; see also *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

Here, the record supports the court's conclusion that there was no bond between Father and P.S. Father was never allowed to live with P.S. While Father visited P.S., his visits were, according to Father, "hit and miss." Sometimes he was incarcerated, other times he was at work or did not have transportation.[5] As previously noted, as of August 14, 2009, Father had attended only two of the past six scheduled visits with P.S., and overall, he had attended six out of 14 visits. Of the 11 scheduled visits between September 23, 2009, and January 8, 2010, Father attended eight. By February 2010, Father was back in custody. While Father claims that P.S. "recognized [him] and a positive, emotional attachment between daughter and father had developed," the record shows that "[P.S.] willingly goes to any adult who holds out their hands to her." The fact that she was comfortable with Father does not mean she was attached or bonded to him. In contrast, the social worker observed P.S. "crawling to and seeking the foster mother's attention, where her physical and emotional needs are consistently being met."

By the time parental rights were terminated, P.S. had lived most of her life away from Mother and Father, and four months with the prospective adoptive parents who

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[5] Father appears to fault CFS for his missed visits. He primarily blames CFS for moving P.S. to Fresno. However, P.S. was not moved to Fresno until November 18, 2009.

provided a loving, safe, and stable environment. P.S. was living with her two half sisters, and the prospective adoptive parents desired to adopt all three girls. P.S. was thriving, had bonded to her half sisters, and enjoyed a sibling relationship with the eight-year-old son of the foster parents. She looked to them, rather than Father, for reassurance and support. Nonetheless, Father wanted to uproot P.S. and place her in a home with her six oldest half siblings under legal guardianship, despite the fact that P.S. had no relationship with them and Father had no plan for getting his life turned around.

In light of this evidence, the court did not abuse its discretion in determining there was no bond between Father and P.S. to warrant application of the parental bond exception.

Because we have rejected Father's argument and affirmed the termination of his parental rights, Mother's argument is moot.

III. DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

MILLER
J.